



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1995

Mr. Robert E. Luna
Law Offices of Earl Luna, P.C.
4411 Central Building
4411 N. Central Expressway
Dallas, Texas 75205

OR95-1167

Dear Mr. Luna:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35735.

The Commerce Independent School District (the "district") received a request for "records, directives and/or decisions" by the district's board of trustees in regard to the board's August 31, 1995 executive session. You contend that information responsive to the request is excepted from disclosure pursuant to sections 552.101, 552.102, 552.107, 552.111, and 552.114.

You state that the board met in closed session to discuss a student complaint against an employee, pursuant to section 551.074 of the Government Code. The board then met in a public session to adopt certain "administrative directives." A letter containing those directives, dated September 1, 1995, was submitted to this office for review. The requestor indicates he is primarily interested in obtaining a copy of those recommendations or directives.¹ You are concerned that release of the letter, which

¹We note that included in the information submitted to this office was a copy of the district's policy regarding sexual harassment. We assume that a copy of this policy was provided to the requestor, since it apparently has already been released to parents, students, and employees. See Gov't Code § 552.006 (governmental body may voluntarily release records, but those records may not be selectively withheld).

was directed to a district employee, could implicate the employee's privacy under either section 552.101 or 552.102 of the Government Code. You state that the employee's attorney objects to release of the letter on the basis of the employee's privacy interests.²

The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in sections 552.101 or section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

You argue that *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), serves to except the letter at issue from disclosure. In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct, and conclusions of the board of inquiry that conducted the investigation. *Id.* The *Ellen* court withheld the witness statements to protect the victims' and witnesses' privacy, but released the board's conclusions and the affidavit, which identified the accused individual. *Id.* at 525. We have reviewed the letter at issue. Even if it is intimate or embarrassing to a reasonable person, it concerns the job performance of a public employee. The letter is of legitimate public interest. Open Records Decision Nos. 470 (1987) at 4 (public has a legitimate interest in the job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is narrow); *see also* Open Records Decision No. 579 (1990). Therefore, the letter at issue may not be withheld from disclosure on the basis of the employee's privacy.

You also argue that the letter is excepted from disclosure pursuant to section 552.111. Section 552.111 excepts from disclosure interagency or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body," but does not except from disclosure factual information relating to the deliberative or policymaking processes. Open Records Decision No. 615 (1993) at 5. Also, section 552.111 does not except from disclosure information relating to routine personnel or administrative matters. *Id.*; *see also Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) (court addressed proper scope and interpretation

²You have expressed concern that information discussed in a closed executive session should not be made public. We note that the Open Records Act and the Open Meetings Act operate differently and have different exceptions. The fact that a student complaint against a public school employee could be discussed in executive session under the Open Meetings Act will not thereby serve to make it confidential under the Open Records Act. *See* Open Records Decision Nos. 485 (1987) at 8-10, 605 (1992) at 2-3.

of § 552.111). The letter does not contain advice, recommendations, or opinions that reflect policymaking. It appears, rather, to provide instruction to an employee in regard to a particular personnel matter.

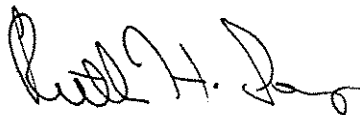
Although the letter at issue is not excepted from disclosure on the basis of privacy or section 552.111, the employee's home address may have to be redacted prior to release of the letter. You must redact the home address of the employee if, as of the time of the open records request, he had opted for that information to be confidential under section 552.024.

You also submitted to this office a variety of other records as responsive to the request. However, you contend that these records may be student education records that are protected under sections 552.026 and 552.114. We note that the requestor has notified this office that he is not seeking information that personally identifies students. Although we are unsure whether the requestor actually seeks these other records, we will assume for purposes of this decision that the records are responsive.

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 excepts from disclosure educational records unless released in compliance with the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g. FERPA provides that federal funding shall not be made available to "any educational agency or institution which has a policy or practice of permitting the release of educational records" of students without the written consent of the parents of minor students. 20 U.S.C. § 1232g(b)(1). A pending open records decision, designated as RQ-775, may be determinative as to these other records.

You must release the directive at issue, which is being returned to you. The other records at issue will be held by this office pending a decision in RQ-775. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

Ref.: ID# 35735

Enclosure: Submitted document

cc: Mr. Paul Harris
Editor
The Commerce Journal
P.O. Box 1291
Commerce, Texas 75429
(w/o enclosure)